

Message Text

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TO AMEMBASSY LONDON
INFO AMEMBASSY BUENOS AIRES
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C O N F I D E N T I A L STATE 152477

E.O. 11652: GDS

TAGS: TGEN, XV, UK

SUBJECT: ANTARCTIC TREATY: U.S. PROPOSAL ON PROCEDURES
FOR RECOGNITION OF CONSULTATIVE STATUS

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REFS: (A) LONDON 8436 (B) STATE 141665 (C) LONDON 10570

1. IN DISCUSSING U.S. PROPOSAL AT JULY 6 MONTHLY MEETING,
U.S. REP SHOULD DRAW ON EXPLANATORY STATEMENT ACCOMPANYING
THE PROCEDURES (REFTEL B). MOST IMPORTANT POINT IS THAT
SUGGESTED APPROACH IS FLEXIBLE AND FOCUSES ON THE RIGHT TO
CONSULTATIVE STATUS WHICH IS CONFERRED BY ARTICLE IX(2) OF

THE TREATY WITHOUT POSING BARRIERS NOT PROVIDED FOR IN TREATY.

2. IN DISCUSSING LESS FORMAL U.S. APPROACH, WHICH FOCUSES ON RIGHT CONFERRED BY TREATY ITSELF, U.S. REP SHOULD DRAW UPON FOLLOWING POINTS, ILLUSTRATING DIFFICULTIES WE SEE WITH "SINGLE NEGOTIATING TEXT" (SNT) RELATING TO PROCEDURES (REFTEL C).

(A) THE FIFTH PREAMBULAR PARAGRAPH BEGINS "RECOGNIZING THAT THE ENTITLEMENT". THE ESSENTIAL POINT IS A RECOGNITION OF THE RIGHT ITSELF AND NOT THE CONDITION PRECEDENT TO THAT RIGHT. IF THE CONDITION PRECEDENT IS REFERRED TO, THE

TREATY LANGUAGE ITSELF SHOULD BE CITED SINCE THE SNT LANGUAGE MIGHT BE READ MORE RESTRICTIVELY.

(B) WITH RESPECT TO THE PARAGRAPH BEGINNING "HAVE HEREBY DECIDED", IT IS THE TREATY PROVISIONS WHICH ULTIMATELY GOVERN ADMISSION TO CONSULTATIVE STATUS, NOT THESE PROCEDURES. USE OF WORDS LIKE "GOVERNING" AND "ADMISSION" IN THESE PROCEDURES WOULD SERVE TO CREATE THE IMAGE THAT THE TWELVE ARE A "CLOSED CLUB".

(C) OPERATIVE PARAGRAPH 1 READS MORE RESTRICTIVELY THAN ARTICLE IX(2) OF THE TREATY ITSELF. THE CRITERION IN IX
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(2) IS THAT A PARTY "DEMONSTRATES SUBSTANTIAL SCIENTIFIC RESEARCH ACTIVITY THERE, SUCH AS", AND THEN CITES THE TWO EXAMPLES WHICH FOLLOW. THE SNT LANGUAGE IMPLIES THAT THESE EXAMPLES ARE EXHAUSTIVE, WHICH WOULD BE MORE RESTRICTIVE THAN THE TREATY ITSELF. THIS COMMENT ALSO RELATES TO PARAGRAPH 2(A) ABOVE.

(D) ALSO, WITH REGARD TO PARAGRAPH 1, WE QUESTION THE APPARENTLY MANDATORY REFERENCE TO THE RECOMMENDATIONS CODIFYING THE NATURE AND SCOPE OF THE INFORMATION TO BE EXCHANGED ABOUT ACTIVITIES IN THE ANTARCTIC. THOUGH IT WOULD BE MOST DESIRABLE FOR NEW CONSULTATIVE PARTIES TO ACCEPT PREVIOUS RECOMMENDATIONS (AS POLAND HAS DONE), PARTIES CANNOT BE REQUIRED TO ACCEPT RECOMMENDATIONS IN WHICH THEY TOOK NO PART AS A CONDITION FOR THE EXERCISE OF A RIGHT CONFERRED BY THE TREATY.

(E) WE HAVE NO REAL PROBLEMS WITH THE DEPOSITARY GOVERNMENT (THE U.S.) TAKING THE LEAD ROLE WITH RESPECT TO ACHIEVING CONSENSUS WITH RESPECT TO CONSULTATIVE STATUS. WE DO, HOWEVER, FEEL IT MAY BE SIMPLER AND WILL AVOID DUPLICATION OF EFFORT IF THE HOST OF THE NEXT CONSULTATIVE MEETING

ASSUMES THIS ROLE, WITH THE ASSISTANCE OF THE DEPOSITARY GOVERNMENT AS APPROPRIATE (E.G., IN THOSE CASES IN WHICH A GOVERNMENT HAS NO DIPLOMATIC RELATIONS WITH ANOTHER CONSULTATIVE PARTY).

(F) THE REFERENCE IN OPERATIVE PARAGRAPH 3 TO PROVISION OF A STATEMENT REGARDING "ACCEPTANCE OF ADOPTED RECOMMENDATIONS AND ITS INTENTION TO APPLY AND BE BOUND BY THEM" IMPLIES THAT SUCH A STATEMENT MAY BE A CONDITION TO EXERCISE OF THE TREATY RIGHT, WHICH, AS DISCUSSED IN PARAGRAPH D ABOVE, IS NOT THE CASE.

(G) THE 12-MONTH REQUIREMENT IN OPERATIVE PARAGRAPH 4 SEEMS TOO RIGID. TO AVOID THIS, THE U.S. PROPOSAL CONTAINS A CONFIDENTIAL

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FLEXIBLE TIME LIMITATION. THIS WOULD ENSURE THAT A PARTY

CLEARLY MEETING THE REQUIREMENT OF ARTICLE IX(2) OF THE TREATY WOULD NOT BE EXCLUDED FROM AN UPCOMING CONSULTATIVE MEETING SIMPLY BECAUSE A 12 MONTH WAITING PERIOD CAN BE IMPOSED.

(H) WITH RESPECT TO THE REQUIREMENT IN PARAGRAPH 4 THAT A SPECIAL CONSULTATIVE MEETING BE CONVENED EACH TIME AN ACCEDING PARTY BELIEVES IT IS ENTITLED TO CONSULTATIVE STATUS, WE BELIEVE, AS DISCUSSED IN THE EXPLANATORY STATEMENT ATTACHED TO OUR PROPOSAL, THAT A SPECIAL CONSULTATIVE MEETING IS NOT THE ONLY METHOD TO ACHIEVE A CONSENSUS ON RECOGNITION OF CONSULTATIVE STATUS. EXCHANGES THROUGH DIPLOMATIC CHANNELS PROVIDE A VARIETY OF MEANS SHORT OF A MULTILATERAL MEETING THROUGH WHICH A CONSENSUS CAN BE ACHIEVED.

(I) WE HAVE SERIOUS RESERVATIONS CONCERNING THE REFERENCE IN PARAGRAPH 5 OF THE SNT TO A "UNANIMOUS DECISION" CONCERNING WHAT IS ESSENTIALLY A QUESTION OF INTERPRETATION OF A TREATY RIGHT. HOWEVER, WE ARE UNCLEAR AS TO WHAT IS MEANT BY "UNANIMOUS DECISION", SINCE CONSULTATIVE MEETINGS IN PRACTICE OPERATE ON A CONSENSUS (NO OBJECTION) BASIS, WHICH HAS SERVED THE TREATY SYSTEM WELL.

(J) FINALLY, WE ARE UNCERTAIN AS TO HOW THESE PROCEDURES ENVISAGED IN THE SNT WOULD BE MADE OPERATIVE. WE WOULD APPRECIATE CLARIFICATION ON THIS.

3. WE ARE IN BASIC AGREEMENT WITH THE DRAFT TEXT RELATING TO THE STATUS OF POLAND AS A CONSULTATIVE PARTY, AND ARE PLEASED TO SEE IT FOLLOWS ARGENTINE PROPOSAL TABLED ON CONFIDENTIAL

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JUNE 16 (REFTEL A, PARA 3) WITH WHICH WE BASICALLY CONCUR. THERE IS A PROBLEM, HOWEVER, IN THE PARAGRAPH BEGINNING "HAVING ASCERTAINED", WHICH WE BELIEVE CONTAINS AN UN-NECESSARY IMPLICATION THAT TREATY PARTIES MEETING THE REQUIREMENTS OF ARTICLE IX(2) WOULD BE IN VIOLATION OF THEIR OBLIGATIONS UNDER THE TREATY.

4. U.S. REP SHOULD TRY TO GET AS CLEAR AN IDEA AS POSSIBLE OF SUPPORT FOR THE SNT AND FOR OUR OWN PROPOSAL AND INCLUDE ASSESSMENT, IF POSSIBLE, IN HIS REPORT OF THE MEETING. VANCE

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